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-- by courier and email --

Hon. Susan Hudson, Clerk
Vermont Public Service Board
112 State St.
Montpelier VT 05620-2701

Re: Petition of Vermont Gas Systems, Inc.-- Phase 1 – Docket 7970 – Scope and Scheduling of Remand Request

Dear Ms. Hudson:

I write on behalf of my clients in Docket 7970, AARP and Ms. Kristin Lyons, in response to the Board's order seeking comments on the scope and scheduling of the proposed remand.

Scope of the Remand – Statutory Criteria (a), (b)(1), (b)(2), (b)(4) and (b)(5).

AARP is particularly concerned about double-digit rate increases, cross-subsidies, and intergenerational inequity, as discussed in AARP's motion under Rule 60(b). These issues arise under criterion (a), but also may affect criteria (b)(2) and (b)(4).

VGS has recently suggested that impacts on ratepayers should be only "generally" considered, because a later rate case would determine how much of a project's costs will be included in rates. VGS Memorandum dated 1/16/15 p.13. AARP agrees that the purpose of § 248 proceedings is not to determine which project costs will be placed in rate base. However, project sponsors often advocate for approval of a project because of its alleged benefits to present and future ratepayers. That is true of VGS. Where those future benefits turn out to have been overstated, or to require one class of ratepayers to subsidize another class for a typical ratepayer's *entire lifetime*, as is now apparent, the original rationale for the § 248 approval no longer holds water. VGS also fails to recognize that it is not good utility policy to allow a utility to invest large sums in a project on the theory that shareholders will carry the risk if the Board decides not to allow rate recovery. The prospect of harm to the utility's credit rating, and to its access to capital, in the past has caused this Board to raise rates. Ratepayers in the end had to foot the bill. Impacts on ratepayers therefore must be within the scope of the remand.

Ms. Lyons submits that cost is a central component of least-cost analysis under criterion (b)(2), especially in comparing the nearly-doubled cost of this project with the alternative of cold climate heat pumps for residential users and the "gas island" for industrial and large commercial users. Ms. Lyons also notes where, as here, a project has been justified on the grounds that it will save ratepayers money, formerly not-undue impacts may become undue as the costs of the project increase and the benefits to ratepayers decline. The near-doubling

of the cost of the project since it was approved means that impacts on greenhouse gas emissions and natural resources, under criterion (b)(5), and on the orderly development of the region, under criterion (b)(1), have become undue. Obviously, the increased cost also affects criterion (b)(4).

The scope of the remand therefore should encompass at least statutory criteria (a), (b)(1), (b)(2), (b)(4) and (b)(5).

Scope of the Remand – Discovery

On July 31, 2014, VGS admitted that sanctions should be imposed upon it for failure to timely notify the Board and parties of the increased construction costs. VGS also committed to quarterly assessment of project costs, including “forward and backward looking assessment of the project, its costs, timelines and projections.” The purpose of these requirements was “to prevent surprises...” July 31, 2014 Letter from Louise Porter to Susan Hudson; and July 31, 2014, Letter from John Marshall to Susan Hudson. In their testimony, VGS’ witnesses assured the Board that this process would commence with the quarterly report planned for October. “*We are going to be starting that in the beginning of October and providing quarterly updates as we track this very closely.*” 9/26/14 Tr.112 (emphasis added). The Board relied on that commitment. The commitment was not honored.

What is at stake is too important, and VGS’ track record is not sufficiently credible, to ask the parties to accept VGS’ prefiled testimony without testing it and obtaining the basis for it using the standard tools of pretrial discovery. Only after that opportunity would it be constructive for the parties to assemble their own prefiled testimony.

Not only will the hearing provide more useful information to the Board, but it will do so in a more efficient manner, if the hearing is preceded by opportunity for discovery. The remand therefore should include the opportunity for discovery.

Schedule of the Remand

AARP and Ms. Lyons concur with the Conservation Law Foundation that no less than 90 days will be needed to allow for a constructive process to unfold. There must be adequate time for discovery and preparation of rebuttal prefiled testimony, before the hearing. There must be sufficient time after the hearing for the Board to consider the post-hearing submissions and then write its decision.

Sincerely,
James A. Dumont
James A. Dumont, Esq.

cc: Docket 7970 service list